IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.741 of 2000

Reserved on 28.11.2007

Date of decision 7.12.2007

State of H.P. Appellant

Versus

Gian Singh Respondent

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.M.A.Khan with Ms.Meenakshi Sharma, Deputy Advocate Generals.

For the respondent: Mr.B.K.Malhotra, Advocate,

Rajiv Sharma,J.

The respondent was accused in Criminal Case No.225-III/99/95 and he was prosecuted under Section 61(1)(a) of the Punjab Excise Act as applicable to the State of Himachal Pradesh in the court of Judicial Magistrate Ist Class, Court No.III,Mandi and was acquitted on 30.6.2000. The State has filed the present appeal against the acquittal of the respondent.

Briefly stated the case of the prosecution is that on 10.4.1995 at about 7.30 a.m., S.H.O. Ravinder accompanied by constables Chaman Lal, Dev Raj and Dharam Pal were going towards village Roparu in connection with patrolling duty and when they reached village Roparu they saw the accused person coming towards Mandi Town. The accused on seeing the policy party tried to run away but was overpowered on suspicion and during search he was found in possession of 2 ½ bottles of illicit liquor. After drawing a sample the case property was then sealed and taken into possession vide recovery memo Ex.PW1/A. FIR Ex.PW3/A

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[1] Whether reporter of local papers is allowed to see the judgment? No.

was registered against the accused person. The accused pleaded not guilty and claimed trial. The prosecution in order to substantiate its case examined as many as five witnesses. The trial court acquitted the accused on 30.6.2000.

Mr.M.A.Khan, learned Deputy Advocate General had strenuously argued that the prosecution has proved the charge against the accused. He then contended that the trial court had failed to appreciate the evidence brought on record. Mr.B.K.Malhotra, learned counsel appearing for the respondent had supported the judgment of the court below.

I have heard the learned counsel for the parties and have also gone through the record carefully.

The prosecution had produced only official witnesses i.e. PW-1 constable Dev Ram, PW-2 the then HC Hukam Singh, PW-3 HC Rajesh Kumar and PW-4 HC Chaman Lal who was member of the raiding party. He has admitted in his cross-examination that Village Roparu is densely populated. PW-5 Ravinder Singh has investigated the case. The incident took place at about 7.35 a.m. on 10.4.1995. Since village Roparu is densely populated the prosecution had sufficient opportunity to have joined some independent witnesses during the investigation. The houses are also shown to be in the vicinity from the place where the liquor was recovered as per the spot map.

The trial court has rightly disbelieved the story of the prosecution and has correctly come to the conclusion that the prosecution has failed to comply with the provisions of Section100 (4) of the Code of Criminal Procedure. The prosecution has failed to prove the charge against the accused. The accused has rightly been acquitted by the trial court. Therefore, the judgment passed by the trial court calls for no interference. The appeal is accordingly dismissed. The bonds furnished by the accused are discharged.

December 7,2007(g) **(Rajiv Sharma), J**